

### **Remarks/Arguments**

#### **Status of Claims**

Claims 1, 3-5, and 10-16 are pending. Claims 1, 3 and 4 have been determined to recite allowable subject matter. The instant amendment requests the cancellation of Claims 5 and 10-16. Claims 2 and 6-9 were canceled via the amendment filed March 34, 2004.

Claims 1, 3, and 4 are drawn to: an isolated polynucleotide consisting of the nucleic acid sequence set forth in SEQ ID NO: 1 or a polynucleotide encoding a MraY polypeptide comprising the amino acid sequence set forth in SEQ ID NO:2, an expression vector comprising a polynucleotide encoding the disclosed MraY protein and transformed host cells.

#### **Specification Amendments(s)**

##### **Claim Amendment(s)**

Claims 5 and 10-16, which are drawn to non-elected inventions, have been cancelled in order to advance prosecution on the merits. Applicants reserve the right to pursue the subject matter recited in claims 5 and 10-16 in subsequently filed continuing applications.

Claim 1 has amended in accordance with the Examiner's suggestion to improve the consistency of the language used in elements (a) and (b). More specifically, Claim 1 has been amended to recite "[a]n isolated polynucleotide selected from the group consisting of: (a) a polynucleotide encoding a polypeptide having the amino acid sequence of SEQ ID NO: 2; and (b) a polynucleotide consisting of the nucleic acid sequence set forth in SEQ ID NO: 1." No new subject matter has been added by virtue of this amendment.

#### **Status of Objections of Record**

##### **Objection(s) Withdrawn**

The objection to the specification made in paragraph 6 (i) of the Office Action mailed June 6, 2003 was withdrawn in light of Applicant's amendments to the specification.

##### **Objection(s) Rendered Moot**

The objection, made in paragraph 13 of the Office Action mailed June 6, 2003, to claim 2 is moot in light of Applicants' cancellation of the claim.

**Objection Maintained**

The objection to the specification made in paragraph 6 (ii) of the Office Action mailed June 6, 2003 regarding the use of trademarks/tradenames in the text of the specification has been maintained. Applicants previously requested permission to defer a response to this objection until a later stage of examination.

Applicants have amended the specification to increase the consistency of the format of the four company designations made in the specification. Applicants made the changes on page 8 suggested by the Examiner in the previous Office Action. In addition, Applicants have corrected the format of four other instances (on pages 10 and 12) in which a trademark/tradename or company name is recited in the specification.

All of the changes, except for one, requests the use of capital letters to refer to a name. For the record, Applicants want to clarify that these changes were made to comply with the fact that capital letters are used in several other places in the specification as filed. For example, see lines 24 through 28 on page 9. In other words the amendments were made to introduce consistency into the specification.

The majority of the amendments to the specification request capitalization of Company/Supplier names and were not made to comply with the practice regarding trademark designations. The only amendment made to correct a trademark designation occurs in the paragraph on page regarding the use of a Packard TriCarb™ scintillation counter. The format of the designation used to refer to the instrument is consistent with the format used on page 9 (line 27) of the specification as filed to refer to Perkin-Elmer's DNA sequencer.

If the Examiner identifies additional trademark/tradename or company designations which she determines need to be amended, Applicants invite the Examiner to make the corrections which she deems to be necessary by Examiner's Amendment.

**Status of Rejections of Record**

**Rejection(s) Withdrawn**

Paragraphs 15 through 20 of the instant Office Action indicate that: the rejection of Claim 1 under 35 U.S.C. §112, second paragraph as being indefinite, was withdrawn in light of Applicants' amendment (paragraphs 15-17); the rejection of Claim 3 under 35 U.S.C. §112, second paragraph as being indefinite, was withdrawn in light of Applicants' amendment

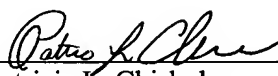
(paragraphs 18); the rejection of Claims 3 and 4 under 35 U.S.C. §112, second paragraph as being indefinite, was withdrawn in light of Applicants' amendment to the claims and/or base claim (paragraph 19); and that the rejection of Claims 1, 3, and 4 under 35 U.S.C. §102(e)(2) as being anticipated by Rubenfield *et al.* (US 6,551,795) was withdrawn in light of Applicants' amendment to the claims and/or base claim (paragraph 20).

Rejection(s) Rendered Moot

Paragraphs 8 through 14 of the instant Office Action indicate that: the rejection of Claims 6-9, and those that depend therefrom, under 35 U.S.C. §101 as being directed to non-statutory subject matter is moot in light of Applicants' cancellation of the claims (paragraph 8); the rejection of claim 6 under U.S.C. §112, second paragraph as being indefinite, is moot in light of Applicants' claim cancellation (paragraphs 9-11); the rejection of Claim 7 under U.S.C. §112, second paragraph as being indefinite, is moot in light of Applicants' claim cancellation (paragraphs 12); the rejection of claims 2 and 7-10 under U.S.C. §112, second paragraph as being indefinite, is moot in light of Applicants' claim cancellation (paragraphs 13); and that the rejection of Claims 6-9 under 35 U.S.C. §102(e)(2) as being anticipated by Rubenfield *et al.* (US 6,551,795) is moot in light of Applicants' claim cancellations.

In light of the Amendments made to the claims and specification in the instant Amendments Applicants believe that the instant claims are in condition for allowance and a favorable action on the merits is earnestly solicited.

Respectfully submitted,

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